

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6703 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

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KALALBHAI SHAKRABHAI CHUNARA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

MR ND GOHIL, A.G.P., for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 25/02/99

ORAL JUDGEMENT

The order of detention dated 12th August 1998 passed by the Commissioner of Police, Ahmedabad City, in exercise of powers conferred on him under sub-sec. (2) of sec. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("the Act" for short) against the petitioner is subject-matter of challenge in the present petition which is filed under the provisions of Art. 226

of the Constitution of India.

2. The grounds of detention indicate that two offences have been registered against the present petitioner at Prohibition Police Station, South Zone under the provisions of sections 66B, 65E, 81, 66(1)B of the Bombay Prohibition Act being C.R. No. 78/98 and 144/98 on 16.4.98 and 22.7.98 respectively.

3. On the basis of the above-mentioned cases and material connected therewith as well as on the basis of the statements of two witnesses, the detaining authority came to the conclusion that the petitioner-detenu is a bootlegger within the definition of sec. 2(b) of the Act and his activities as a bootlegger disturbed maintenance of public order. The detaining authority, therefore, with a view to preventing the detenu from acting in a manner prejudicial to the maintenance of public order, passed the impugned order of detention.

4. It is not in dispute that the procedural requirements enjoined by the Act and Art. 22(5) of the Constitution have been complied with by the detaining authority, Advisory Board and the State of Gujarat.

5. Several contentions have been urged by the learned advocate for the petitioner while challenging the order of detention. However, it is not necessary to refer to each and every contention, except the one referred to hereinbelow which merits acceptance.

6. The learned advocate for the petitioner has submitted that there is no material on record of the case to indicate that the activities of the detenu as a bootlegger disturbed maintenance of public order and therefore the order of detention is unjust, illegal and improper and it deserves to be quashed and set aside. It has been further submitted by him that, looking to the facts and circumstances of the case, the impugned order of detention ought not to have been passed by the detaining authority.

7. In pursuance of the notice issued by this Court, an affidavit-in-reply has been filed by the Commissioner of Police. It has been submitted in the affidavit-in-reply that the detaining authority himself had verified the genuineness and correctness of the statements made by the witnesses revealing activities of the petitioner which were adversely affecting public order. It has been further stated in the affidavit that the case of the detenu fell within the definition of

"bootlegger" as defined under sub. 2(b) of the Act and upon carefully examining and considering the material placed before him, including the statements of witnesses, after application of mind, the detaining authority was satisfied that it was necessary to detain the detenu under the provisions of the Act so as to prevent him from acting in any manner prejudicial to the maintenance of public order. It has been further stated that the petitioner-detenu is dealing in liquor and his activity of dealing in liquor was likely to cause grave or widespread damage to life, property or public health and therefore he was justified in passing the impugned order. It has been specifically submitted in the affidavit that the activities of the petitioner-detenu were adversely affecting maintenance of public order and therefore it was necessary to detain him. In the circumstances, the impugned order of detention was passed by him.

8. After hearing the learned advocates and upon perusal of the relevant material, *prima facie*, it appears that the order of detention cannot be justified because activities of the petitioner-detenu were not adversely or prejudicially affecting public order. Upon perusal of the relevant statements, it is clear that the activities of the petitioner-detenu did not prejudicially affect public order.

9. The distinction between 'public order' and 'law and order' situation has been well defined and interpreted by the Hon'ble Supreme Court. It has been held by the Supreme Court in several decisions that it is the degree and the extent of the objectionable activities which are of vital importance for examining whether a man has committed only a breach of 'law and order' or has acted in a manner likely to cause disturbance to 'public order'. On a careful examination of the statements of both the witnesses recorded by the detaining authority, even if the statements are accepted at their face value, it is not possible to come to the conclusion that the activities attributed to the detenu had prejudicially affected the public order because the activities of the petitioner-detenu had affected two individuals only. As there was no positive material to indicate that the activities of the detenu as a bootlegger disturbed the maintenance of public order, the detention order could not have been passed. Upon perusal of law laid down by the Hon'ble Supreme Court in the case of *Piyush K. Mehta v. The Commissioner of Police, Ahmedabad*, AIR 1989 SC 491, it is very clear that the activities referred to in the statements of the witnesses as well as in the grounds of detention cannot be said to have affected public order

in a prejudicial manner. In the circumstances, the order of detention is liable to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds. The order of detention dated 12.8.1998 passed by the Commissioner of Police, Ahmedabad City, which is produced at Annex. A to the petition, is quashed and set aside. The respondents are directed to release the detenu immediately unless his presence is needed in any other case. Rule is made absolute with no order as to costs.

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